IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHRIST LIBERTY FAMILY LIFE CENTER,	)	
Plaintiff,	)	Civil Action No. 1:10-CV-2326
	)	Judge Charles A. Pannell, Jr.
v.	)	
CITY OF AVONDALE ESTATES, GEORGIA,	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF CHRIST LIBERTY FAMILY LIFE CENTER AND MAUCK & BAKER, LLC'S MOTION FOR ATTORNEY'S FEES AND COSTS

Plaintiff Christ Liberty Family Life Center ("Christ Liberty" or "the Church") and their attorneys Mauck & Baker, LLC ("Mauck & Baker) hereby present their memorandum in support of their motion for attorney's fees and costs.

I. INTRODUCTION

Christ Liberty is the "prevailing party" in this case by virtue of Court order. See, *Hensley v. Eckerhart*, 461 U.S. 424, 432 (1983) ("A typical formulation is that []plaintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.") See, also *Smallbein v. City of Daytona Beach*, 353 F.3d 901, 904 (11th Cir. 2003) ("[I]n order to be considered a prevailing party under § 1988 (b), there must be a 'court-ordered … 'material alteration of the legal relationship of the parties' necessary to permit an award of attorney's fees.")

Christ Liberty prevailed on August 12, 2010 when they obtained Court-Ordered injunctive relief. The Order Provides, in part, "Defendant will not enforce against Plaintiff Section 818(1)(A) and the conditional use requirements of its Zoning Ordinance" and "Plaintiff may lawfully use and possess 137 Maple Street, Avondale Estates, Georgia, for church use". Exhibit 9.

Accordingly, under 42 U.S.C. 1988(b) Christ Liberty is entitled to recover reasonable attorney's fees from the city. In the Court's Order of February 17, 2012, the Court emphasized that such fees should be "**reasonable**." This memorandum addresses that issue in great detail, plus the reasonable hourly rate for each attorney, which taken together comprise the "lodestar". Under *Hensley v. Eckerhart*, which announced certain guidelines for calculating a "reasonable" attorney's fee under § 1988, the "lodestar" figure, obtained by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate, is "presumed to be the reasonable fee contemplated by § 1988." *Riverside v. Rivera*, 477 U.S. 561, 568 (1986).

II. BY OBTAINING THE AUGUST 12, 2010 ORDER CHRIST LIBERTY ACHIEVED "EXCELLENT RESULTS" AND "SUBSTANTIAL RELIEF" AS CONTEMPLATED BY *HENSLEY*, AND THEIR ATTORNEYS ARE ENTITLED TO COMPENSATION FOR ALL HOURS REASONABLY EXPENDED ON THE LITIGATION, WITHOUT REDUCTION FOR CLAIMS THAT DID NOT SUCCEED

Since the day of filing on July 23, 2010 this case has had one main objective at the merits stage: to obtain declaratory and/or injunctive relief entitling Christ Liberty to occupy its property at 137 Maple Street, Avondale Estates, as a church. See, the Complaint, prayers for relief A-D. Christ Liberty was wholly successful in obtaining this relief, which means that Christ Liberty's attorneys obtained "excellent results" in this case. *Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983). Likewise, obtaining a Court Order finding the City liable for violating RLUIPA was primary; and again Christ Liberty was wholly successful in obtaining this relief. A secondary item of relief was to obtain damages for Christ Liberty.[1] See, prayers for relief E-G. Because the claims for injunctive relief under RLUIPA, the finding of liability under RLIUPA, and damages for the RLUIPA violation all were interrelated, both legally and factually, Mauck & Baker is

[1] Christ Liberty again prevailed on February 17, 2012 when the Court entered the Order finding, inter alia, "there is no question of material fact as [to] the City's liability under RLUIPA." Exhibit 10. Finally, Christ Liberty prevailed on March 14, 2012 when the Court entered judgment for Christ Liberty against the City for actual damages in the sum of $5,700. Exhibit 11.

entitled to compensation for "all hours reasonably expended on the litigation". *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983). "In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit." *Hensley* at 435.

As the Court in *Hensley* details:

> Where a plaintiff has obtained **excellent results**, his attorney should recover **a fully compensatory fee**. Normally, this will encompass **all hours reasonably expended** on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified. In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. (Citation omitted.) Litigants in good faith may raise alternative legal grounds for a desired outcome, and **the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee**. The result is what matters.

Hensley at 435 (Emphasis added). Likewise,

> Where a lawsuit consists of related claims, a plaintiff who has won **substantial relief** should not have his attorney's fee reduced simply because the district court did not adopt each contention raised.

Hensley at 440 (Emphasis added). Thus, because Christ Liberty did not prevail on all their claims for damages, and the Court did not reach claims other than RLUIPA, the forgoing shows there should be no deduction for attorney time spent on these claims.

The time spent on these claims should be compensated fully for a second reason, which is that they are "related" to the prevailing claims as contemplated by *Hensley* at 435 (Emphasis added):

> In other cases the plaintiff's claims for relief will involve a common core of facts or will be based on related legal theories. Much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis. **Such a lawsuit cannot be viewed as a series of discrete claims**. Instead the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.

All damages claims, including the claim for deprivation of constitutional rights that was disallowed, were related to the prevailing claims both factually and legally. Likewise, the legal theories which the Court did not reach all were related by the identical set of facts. The time spent on these matters is compensable.

The case of *City of Riverside v. Rivera*, 477 U.S. 561, 564 (1986) further illustrates these principles. In *City of Riverside* the plaintiffs sued 32 defendants (mostly police officers), alleged 256 violations of law, and sought injunctive relief, declaratory relief and damages. *City of Riverside* at 589. Ultimately, $33,350 in damages was awarded, against six of the defendants. The other 26 defendants were dismissed on motions for summary judgment or exonerated by the jury. Plaintiffs were unsuccessful in obtaining declaratory or injunctive relief. *City of Riverside* at 589.

As in our case the plaintiffs in *City of Riverside* sought compensation for all attorney time reasonably expended, that is, the full lodestar value, on all 256 claims, and against all 32 defendants. *City of Riverside* at 565. The District Court awarded 100% of the attorney time sought, which resulted in $245,456.25 in attorney fees. The U.S. Supreme Court affirmed, using the reasoning of *Hensley*. *City of Riverside* at 581. In elaborating on *Hensley*, the Seventh Circuit further explains:

> If arguments that do not contribute to a plaintiff's ultimate success were not eligible for compensation for that reason alone, then attorneys might be discouraged from raising novel but reasonable arguments in support of their clients' claims and a **disincentive for strong advocacy could result**. The ethics of the legal profession counsel an opposite approach. See, Model Rules Of Professional Conduct Rule 1.3 cmt. 1 (1983) ("A lawyer should act with commitment and dedication to the interests of the client and with a zeal in advocacy on the client's behalf."). A lawyer who figures out the likeliest outcome in his favor, and aims only for that, is likely to fall short. **The good lawyer aims higher, and is not improvident to do so**.

Jaffee v. Redmond, 142 F.3d 409, 416-17 (7th Cir. 1998) (Emphasis added).

Finally, the 11th Circuit has made it clear that Christ Liberty's recovery of equitable relief alone would entitle Mauck & Baker to full compensation for their time reasonably expended. "This principle is no less applicable where the plaintiff did not receive all the relief requested. … [a] plaintiff who obtains [an] injunction but not damages may still recover a fee award for all hours reasonably expended." *Brooks v. Georgia State Board of Elections*, 997 F.2d 857, 868 (11th Cir. 1993).

III. IN ADDITION TO "EXCELLENT RESULTS" UNDER *HENSLEY*, CHRIST LIBERTY ACHIEVED A HIGHLY VALUED PUBLIC BENEFIT

Christ Liberty achieved much more than the various individual items of relief ordered by the Court, by obtaining a precedent inuring to the benefit of all religious institutions which find themselves in zoning disputes with municipalities. The Court should take this into account in awarding attorney's fees.

> Congress expressly recognized that a plaintiff who obtains relief in a civil rights lawsuit "does so not for himself alone but also as a 'private attorney general,' vindicating a policy that ***Congress considered of the highest importance***. (Citation omitted.) "If the citizen does not have the resources, his day in court is denied him; the congressional policy which he seeks to assert and vindicate goes unvindicated; and ***the entire Nation, not just the individual citizen, suffers***.

City of Riverside v. Rivera, 477 U.S. 561, 575 (1986) (Emphasis added). In *Villano v. City of Boynton Beach*, 2001 U.S. App. LEXIS 15419, *16 (11th Cir. 2001) (emphasis added) the Eleventh Circuit held:

> [T]he court needs to account for the vital role private litigation plays in the enforcement of civil rights, the difficulties involved in sustaining those lawsuits, **the heightened importance of such lawsuits when the defendant is a public body**, and the public benefit that occurs when those lawsuits **ultimately vindicate a constitutional right**.

It should be noted that a constitutional right was vindicated in our case. RLUIPA is intended to prevent government infringement of First Amendment protections. *World Outreach Conf. Ctr. v. City of Chicago*, 591 F.3d 531, 534-35 (7th Cir. 2009).

When Christ Liberty met with Mauck & Baker they lacked the resources to take on Avondale in federal litigation over the protection of their rights. With the incentive provided by § 1988, Mauck & Baker provided those resources and Christ Liberty won the main relief they sought and more. In *Blanchard v. Bergeron*, 489 U.S. 87, 96 (1989) the Supreme Court held "[u]nlike most private tort litigants, a civil rights plaintiff seeks to vindicate important civil and constitutional rights that cannot be valued solely in monetary terms."

When awarding fees the Court should consider the public benefit.

IV. MAUCK & BAKER SHOULD BE COMPENSATED FOR ALL ATTORNEY TIME REQUESTED IN EXHIBIT 7

a. Introduction

Attached to the motion as Exhibit 7 are the Mauck & Baker time records including the attorney and paralegal time expended in the merits portion of this case.[2] Mauck & Baker should be compensated for all attorney time set forth

[2] Mauck & Baker also is entitled to compensation for attorney time expended post-merits in establishing their right to recover attorney's fees under § 1988. *Villano v. City of Boynton Beach*, 2001 U.S. App. LEXIS 15419, **19-20 (11th Cir. 2001); *Johnson v. University College of Alabama in Birmingham*, 706 F.2d 1205, 1207 (11th Cir. 1983). Exhibit 7 includes post-merits attorney time expended through April 19, 2012. This is addressed in § V, below.

there. "Adequate fee awards are essential to the full enforcement of the civil rights statutes and are an integral part of the remedies necessary to secure compliance with those laws." *Johnson v. University College of Alabama in Birmingham*, 706 F.2d 1205, 1211 (11th Cir. 1983).

b. Mauck & Baker's Efficiencies Will Result in a Lower Fee Award Against the City

As reflected in Exhibit 7 Mauck & Baker was **extremely** efficient in the allocation of attorney work in the merits portion of this case. Two Mauck & Baker attorneys worked on the merits portion of this case, John Mauck and Lee McCoy. Attorney Mauck has been licensed for 40 years and has been litigating on behalf of churches in zoning disputes with municipalities for 27 years. He originated portions of the RLUIPA statute Congress enacted, and testified before the U.S. House of Representatives in support of RLUIPA's passage. He is a "top of the market" attorney in RLUIPA litigation, that is, in the top 1% of RLUIPA litigators nationally. Exhibit 2, ¶¶ 15-16. Because of his expertise he bills at the rate of $550 per hour in RLUIPA cases. See, Exhibit 1 generally as to the foregoing facts.

Attorney McCoy is an eleven year attorney who was employed at Mauck & Baker from 2006-12. During those six years his practice was concentrated in religious liberties and civil rights litigation, including handling a number of RLUIPA cases in Chicago and outside Illinois. See, Exhibit 3. In 2012 Mauck & Baker bills him at the rate of $300 per hour in RLUIPA cases.

The original "worked hours" column in Exhibit 7 reflects that Attorney McCoy expended 617.1 hours on the merits in this case. Attorney Mauck on the other hand expended only 45.9 hours on the merits. Most of Attorney Mauck's involvement was limited to advising Attorney McCoy regarding the zoning facts and laws Attorney Mauck considered central to this case, editing pleadings, briefs and motions which Attorney McCoy drafted, conceiving and developing litigation strategies, and negotiating with opposing counsel. Exhibit 7, generally. Accordingly, **more than 93%** of the attorney time on the merits in this case was billed at the rate of $300 per hour and **less than 7%** at $550 per hour. Mauck & Baker's efficiency works to the benefit of the City on this fee petition.

A similar efficiency was achieved by the use of a paralegal instead of Attorney McCoy. The time records reflect that Paralegal Cunningham drafted the declarations of Pastor Rose Thomas, Angela Hawkins and Emma Byrd and a number of discovery documents, at the hourly rate of $165. Paralegal time is compensable under § 1988. *Missouri v. Jenkins,* 491 U.S. 274, 285 (1989).

The big question is whether McCoy's expenditure of approximately 370 hours after the Church moved in in mid-October 2010 was reasonable. The answer is yes, as explained below.

c. **The City Obstinately Refused to Consider a Reasonable Settlement and Prolonged the Merits Litigation for 13 Additional Months, Dramatically Increasing the Size of the Attorney's Fees to be Awarded Against the City**

In attorney fee shifting matters and the issue of reasonable settlement of cases, courts recognize two general principles. First, there is a social benefit achieved when a **plaintiff** in a fee-shifting matter refuses to settle and ultimately prevails on the merits, as happened in this case. A court precedent results, which inures to the public benefit. There is no basis for cutting an award of attorney's fees when the **plaintiff** refuses to settle and later prevails. See, *Rodriguez v. City of Long Beach*, 2012 U.S. Dist. LEXIS 31036, *17 (C.D.CA. 2012) citing the Supreme Court in *City of Riverside v. Rivera*, 477 U.S. 561, 575 (1986).

By way of contrast, courts treat **defendant** refusals to settle differently when the plaintiff later prevails on the merits. Courts recognize a relationship between the unreasonableness of the **defendant** in refusing to settle and the larger size of the attorney's fees to be awarded against the defendant, when the plaintiff later prevails on the merits. See, *Medders v. Autauga County Board of Education*, 858 F.Supp. 1118, 1123-24 (M.D.AL. 1994) a case in which the defendant acted reasonably in settlement discussions. (A **defendant** "not obstinately" refusing to settle results in "a reduced number of hours charged against it".) In *McGowan v. King, Inc.*, 661 F.2d 48, 51 (5th Cir. 1981) the Court held:

> And although defendants are not required to yield an inch or to pay a dime not due, they may by militant resistance increase the exertions required of their opponents and thus, if unsuccessful, be required to bear that cost.

In our case the City's obstinate and repeated refusal to consider a reasonable settlement unnecessarily prolonged the merits litigation for 13 months and necessitated that the parties engage in extensive discovery and summary judgment motion practice. The City's obstinacy also forced Christ Liberty's filing of this fee motion, supporting memorandum, and the reply brief to come.

Indeed, the City, or at least the City's attorneys, appear to have undertaken a vendetta against Mauck & Baker. See, Exhibit 1, ¶ 12. For example, the first paragraph of the introduction to "Defendant's Response to Plaintiff's Motion for Summary Judgment", the first and last sentences read:

> This case should apparently be restyled as "Mauck & Baker, LLC, a Chicago law firm v. City of Avondale Estates. … The purpose of this litigation for Plaintiff's counsel seems to be to extract an exorbitant amount of attorney's fees from the City.

Exhibit 17, Document 51, filed 7/8/11. This vendetta has negatively colored all settlement discussions, and made settlement impossible.

Attached as Exhibit 12 is the December 15, 2010 letter from Mauck & Baker and the January 7, 2011 letter in response from the City's attorneys.[3] At this point Christ Liberty already had obtained injunctive relief, and only damages and attorney's fees remained to be resolved. In the December 15th letter Mauck & Baker offered to settle the **entire case** for $80,000, advising the City that the church's damages were "at least $25,000" and attorney's fees "approximately $95,000."

But the City refused to consider a reasonable settlement response. In its January 7, 2011 response the City took the hard line position that the church unreasonably had pressed on "with untenable claims for damages that are barred by the basic principles of causation" and "I have great confidence that … the District Court grants summary judgment against your claim for damages". The City did not back away from this position until February 17, 2012, 13 months later, when the Court rejected the City's causation argument and held the City liable under RLUIPA.

In its letter the City also contended that Mauck & Baker's attorney's fees "are outrageously inflated", that "the most generous allocation of attorneys' fees that I believe you have any chance of recovering from the District Court

[3] Neither letter indicates an intention that the contents be kept confidential.

would be approximately twenty hours total"; and that as of January 7, 2011 Mauck & Baker's "only actual work performed is to adapt a form complaint and conduct two one-hour settlement phone conferences", claiming that the Court would award only "$5,000 in fees." In response to Mauck & Baker's offer to settle for $80,000 the City offered "payment of $12,500 to settle **all claims, including attorney's fees**." (Emphasis added.)

The City was within its rights to take the hard line positions that it certainly would obtain summary judgment on Christ Liberty's damages claim due to the lack of causation, and that Mauck & Baker's claim for attorney's fees was grossly inflated beyond 20 hours. But, having taken these positions **the City ensured that the case could in no way settle**. Accordingly, the City knowingly assumed the risk that it would be assessed a much larger sum for attorney's fees if it lost on its causation argument, after engaging in discovery and summary judgment litigation.

Mauck & Baker's attorney time records (Exhibit 7, see entries for 1/12 and 1/17/2011) reflect that immediately upon review of the January 7th "correspondence from opposing counsel regarding settlement and posture of issues in the case" Attorneys Mauck and McCoy realized they had no choice but to undertake preparation of Christ Liberty's motion for summary judgment. Time entries for the subsequent weeks and months reflect extensive time expended in research and preparation of the motion for summary judgment, review of Christ Liberty's documents, efforts in issuing and responding to written discovery, depositions, and other related matters.

The City perpetuated its hard line positions precluding settlement on March 11, 2011 by issuing a Rule 68 offer in the amount of $15,000 "to settle all claims raised by Christ Liberty in its Complaint and includes 'costs accrued to date' which include reasonable attorney's fees pursuant to 42 U.S.C. § 1988" plus all forms of damages. See, Exhibit 14 (Emphasis in original). Again, the City knowingly assumed the risk of a much larger fee award if it did not prevail on its arguments. It did not prevail and now it faces the consequences of its hard line negotiating positions.

On February 17, 2012 the Court rejected the City's causation argument and declared Christ Liberty to be the prevailing party. On March 15, 2012 a final Judgment Order was entered awarding $5,700 in damages to Christ Liberty. At this point only attorney's fees and costs remained to be settled.

The City continued its obstinate refusal to take a reasonable settlement position. The parties had two telephonic settlement conferences on attorney's fees shortly after March 15th. Attached as Exhibit 15 is the City's March 20, 2012 Rule 68 offer of judgment for $40,000 for attorney's fees.

On March 28, 2012, John Mauck responded to the City by letter, pointing out that if Mauck & Baker was required to file a fee petition their total fees likely would approximate $240,000, and the City's offer of $40,000 was only 16.7% of this total. See, Exhibit 16. In his letter Attorney Mauck explained to the City that given the significant relief Christ Liberty had won on the merits, a cut of 83.3% would be unprecedented; and that if the City's position remained the same it would preclude any possibility of settlement.

The City refused to add anything to its settlement offer. Instead, in its March 28th letter Mauck & Baker made a final offer to settle for $150,000. The City declined.

As the letter of March 28 also reveals, the City refused to agree to a settlement conference before the Court or Magistrate Judge. Accordingly, Mauck & Baker has been forced to file its fee motion.

d. Mauck & Baker Faced Significant Difficulty in Prevailing on the Merits Given (1) the City's Obstinate Refusal to Settle and (2) District Court Treatment of RLUIPA as Viewed From the Time the Case was Filed

In determining the reasonable number of hours expended by Christ Liberty's attorneys to prevail in this case, or the propriety of their hourly rates, the Court may consider the likely difficulty in prevailing on the merits in this case as it appeared on the date the case was filed. *City of Burlington v. Dague*, 505 U.S. 557 (1992). As explained by Supreme Court in *Dague* at 562:

> The risk of loss in a particular case (and, therefore, the attorney's contingent risk) is the product of two factors: (1) the legal and factual merits of the claim, and (2) the difficulty of establishing those merits. The second factor, however, is **ordinarily reflected in the lodestar –** either in the **higher number of hours expended** to overcome the difficulty, or in the **higher hourly rate** of the attorney skilled and experienced enough to do so.

(Emphasis added.) Likewise, the Supreme Court has held:

> No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services regardless of success.

Pennsylvania. v. Delaware Valley Citizens' Council for Clean Air, 483 U.S. 711, 736 (1987) (Blackmun, J., dissenting—the majority in the case did not dispute Blackmun on the point) quoting *Cherner v. Transitron Elec. Corp.*, 221 F.Supp. 55, 61 (Mass 1963).

This Court already has determined the first of the two factors elucidated by the Supreme Court in *Dague*, the merits of the case, by entering three Court Orders awarding substantial relief to Christ Liberty, including injunctive relief. Accordingly, the City has no basis to argue it is being penalized because Mauck & Baker brought a meritless case on which they somehow prevailed in only a nominal way. Christ Liberty's victories were clear, repeated and significant. However, **the City's continual resistance required continued work**.

Now the Court may turn to the question of difficulty in establishing the merits and the effect it had on the number of hours and/or hourly rates of Mauck & Baker. Because Christ Liberty lacked the funds to pay, Mauck & Baker took upon themselves the entire financial burden of establishing the merits in Court. As noted above, because the City refused even to consider a reasonable settlement position Mauck & Baker was forced to litigate this matter through discovery and summary judgment, resulting in a large increase in the number of hours required to conclude the merits as prevailing party.

But the skill of the attorneys from Mauck & Baker also played an important role in bringing victory, in overcoming apparently long odds in prevailing. This adds support for the requested hourly rates. On the date Christ Liberty's case was filed, July 23, 2010, Mauck & Baker confronted a considerable hurdle in prevailing on the merits. RLUIPA was first enacted in 2000 and there was not much case law in the Eleventh Circuit on the date of filing to guide the District Courts. From Mauck & Baker's experience around the country, and perhaps as a result of the lack of precedent, there was and remains resistance among some judges to RLUIPA's concepts and theories. As a general principle it is difficult for plaintiff attorneys in the forefront of litigation under a brand new statute with little case law to make headway. This certainly has been true in Mauck & Baker's experience. Exhibit 2, ¶ 17.

The impact from these facts in making victory in RLUIPA cases difficult are borne out by a review of case law. Mauck & Baker has located seven District Court RLUIPA opinions within the Eleventh Circuit extant on July 23, 2010 in which the plaintiff was a religious organization. See, summary in Exhibit 18. Of these seven, six resulted in losses for the religious institution and only one in a victory,[4] a winning percentage of 14.3%.[5] This is significant risk for a law firm such as Mauck & Baker which is not a not-for-profit. Such a firm takes a huge hit financially when it litigates a case for two years but never is paid.

Additionally, municipalities often have insurance counsel, as Avondale has in this case, and as a result have little incentive to settle, as Avondale has displayed in this case. Beyond this, municipalities (and their insurers) are willing to pay large sums of money to defend these cases, and have proven strongly resistant to all but the most inadequate (to the Church) of settlements. Avondale's actions again bear this out. And defense counsel in these cases usually

[4] *In Covenant Christian Ministries, Inc. v. City of Marietta*, 2008 U.S. Dist. LEXIS 54304 (N.D.GA. 2008) the Court found that the City's zoning ordinance violated RLUIPA but awarded no relief to the church other than $1 in nominal damages. The church was not allowed to use its property as a church. See, *Covenant Christian* at 654 F.3d 1236. Accordingly, this case is categorized as a loss.

[5] Court cases in which the plaintiff was a religious institution are considered. Inmate cases are not included on relevancy grounds, and because they most likely would reduce the percentage of success significantly.

are sophisticated, highly skilled and highly motivated, given the prospect of repeat municipal business as RLUIPA cases grow in number. Exhibit 2, ¶ 18.

The difficulty Mauck & Baker faced in bringing the case to a successful conclusion on the date of filing the complaint was significant. This should result in a larger lodestar, both in the number of hours found to be reasonable, and adding support for the requested hourly rates.

V. MAUCK & BAKER IS ENTITLED TO POST-MERITS COMPENSATION FOR THEIR PROFESSIONAL TIME

As mentioned above in footnote 2, Mauck & Baker also is entitled to compensation for attorney time expended post-merits in establishing their right to recover attorney's fees under § 1988. *Villano v. City of Boynton Beach*, 2001 U.S. App. LEXIS 15419, **19-20 (11th Cir. 2001); *Johnson v. University College of Alabama in Birmingham*, 706 F.2d 1205, 1207 (11th Cir. 1983). Exhibit 7 includes post-merits attorney time expended only through April 19, 2012.

Mauck & Baker will file its supplemental statement of attorney time and final request for compensation with the reply brief.

VI. MAUCK & BAKER IS ENTITLED TO COMPENSATION FOR TIME EXPENDED ON PUBLIC RELATIONS

The injunctive relief allowing Christ Liberty to occupy its property was entered on August 12, 2010. Christ Liberty actually began worshipping in its property in approximately mid-October 2010. Prior to mid-October 2010 Mauck

& Baker, on behalf of Christ Liberty, engaged in various public relations efforts. See, Exhibit 7, time entries between the dates of 5/26/10 and 8/16/10.

Public relations efforts which further the purposes of the litigation are compensable under § 1988. *Jenkins v. State of Missouri*, 131 F.3d 716, 721 (8^{th} Cir. 1997) ("public relation efforts necessary to accomplish the objections of the litigation may be compensated under section 1988").

The purpose of the public relations work was identical to the main goal of the litigation, which was to pressure the City into allowing the Christ Liberty to worship in their property by an agreement, without extensive litigation. Exhibit 1, ¶ 9. It worked, and the City relented. Accordingly, Mauck & Baker should be compensated for its public relations efforts.

VII. THE REQUESTED HOURLY RATES ARE REASONABLE

John Mauck has 40 years of law practice, the vast majority of which has included litigation on behalf of churches in zoning disputes with municipalities. He initiated portions of the legislation which became RLUIPA in 2000. He testified before a subcommittee of the U.S. House Committee on the Constitution chaired by Rep. Henry Hyde, and detailed from his practice many examples of churches being denied zoning permission for various reasons. He is a nationally recognized, top of the market (i.e. top 1% nationally), litigation attorney in RLUIPA matters. In addition, he spearheads Mauck & Baker's RLUIPA litigation practice, which is national in scope. Exhibit 1, ¶¶ 3, 7. In RLUIPA matters his reasonable hourly rate is $550. See, Exhibits 5 and 6.

Lee McCoy has practiced law since 2001. For the first four and a half years, as an attorney in Mississippi, he focused primarily on defending municipalities in lawsuits. On June 1, 2006 he started with Mauck & Baker LLC and worked with them until March 2012. His practice was concentrated on religious liberties, religious land use litigation, and general litigation. He has been actively involved in handling RLUIPA, church zoning cases and religious civil rights cases in Chicago and other states. As part of his practice Lee has advised clients and other attorneys in RLUIPA, church zoning and religious civil rights in Alabama, Arkansas, California, Georgia, Illinois, Mississippi, New Hampshire, Tennessee, Texas and Wisconsin. He also has written articles on, been quoted in articles, and given interviews about RLUIPA, church zoning and religious civil rights. Exhibit 3. In RLUIPA matters his reasonable hourly rate is $300. See, Exhibits 5 and 6.

Andy Norman has been a licensed attorney for 33 years and except for a portion of the first year, all of it has been in litigation. He has extensive litigation credentials. His practice is concentrated in both RLUIPA and attorney fee shifting. He has testified by way of declaration, affidavit, deposition or courtroom testimony on more than 150 occasions on reasonable attorney's fees and fee shifting. Exhibit

2. In RLUIPA, reasonable attorney's fees and fee shifting matters his reasonable hourly rate is $500. See, Exhibits 5 and 6.

VIII. THE ATTORNEYS ARE ENTITLED TO COMPENSATION AT THEIR CURRENT RATES FOR ALL TIME EXPENDED

All counsel in this case have gone unpaid from the commencement of work to the present. For this reason all professional time should be compensated at current hourly rates, to compensate for the delay in payment.

> We have allowed district courts to use either current rates or past rates with interest when calculating the lodestar amount, *see, Smith v. Village of Maywood*, 17 F.3d 219, 222 (7th Cir. 1994), because either method provides "an adjustment for delay in payment [which] is … an appropriate factor in the determination of what constitutes a reasonable attorney's fee…."

Missouri v. Jenkins by Agyei, 491 U.S. 274, 284 (1989). See, also *Morgado v. Birmingham-Jefferson County Civil Defense Corps*, 706 F.2d 1184, 1193-94 (11th Cir. 1983); *Johnson v. University College of the University of Alabama*, 706 F.2d 1205, 1210-11 (11th Cir. 1983).

Respectfully submitted,

CHRIST LIBERTY FAMILY LIFE CENTER AND MAUCK & BAKER, LLC

s/ KEVIN H. THERIOT
KEVIN H. THERIOT
GA BAR NO. 373095
ALLIANCE DEFENSE FUND

15192 ROSEWOOD STREET
OVERLAND PARK, KS 66224
TELEPHONE: (913) 685-8000
FACSIMILE: (913) 685-8001
ktheriot@telladf.org

s/ JOHN W. MAUCK
JOHN W. MAUCK*
IL BAR NO. 1797328
MAUCK & BAKER, LLC
ONE NORTH LASALLE STREET
SUITE 600
CHICAGO, IL 60602
TELEPHONE: (312) 726-1243
FACSIMILE: (312) 726-1039
jmauck@mauckbaker.com

*Admitted *Pro Hac Vice*.

ATTORNEYS FOR PLAINTIFF

Certification

I, John W. Mauck, certify that this memorandum has been prepared with one of the font and point selections approved by the Court in LR5.1C (Times New Roman, 14 point).

s/ KEVIN H. THERIOT
KEVIN H. THERIOT

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served on April 20, 2012, via the court's electronic filing system on all counsel of record in this matter.

s/ KEVIN H. THERIOT
KEVIN H. THERIOT